

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION (AKRON)

IN RE:

JANET HARRIS

Debtor

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)
)
)
)
)

CASE NO. 20-BK-50537

CHAPTER 7

JUDGE: KOSCHIK

MOTION TO AVOID JUDICIAL LIENS UNDER §522

Now come Debtor, Janet Harris, who humbly objects to two judicial liens against her property and requests this court for an Order to avoid these same liens. These liens, with a combined value of \$8,813.50, impair her property exemptions under R.C. §2329.66. These liens stems from two money complaints filed in Stow Muni Court on December 18, 2019 and April 9, 2019, respectively, and may be rightfully avoided under §522(f). A brief memorandum in support of this motion is attached.

Respectfully submitted,



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(330) 571-3350 (cell)
mark_graziani@yahoo.com

Attorney for Claudia Eriksson

MEMORANDUM IN SUPPORT

Relevant Facts:

1. Over the last few years, Janet Harris has been struggling to make ends meet as a substitute teacher. She makes little money and lives a meager life.
2. On April 9, 2019, Bank of America filed suit against Janet Harris in Stow Muni Court for monies owed on a credit card. On May 30, 2019, a judgment was awarded in the amount of \$4,772.34.
3. On December 18, 2019, Portfolio Recovery Associates filed suit against Janet Harris in Stow Muni Court for monies owed on a credit card. On February 20, 2020, a judgment was awarded in the amount of \$4,041.16.
4. In January, 2020, Bank of America started garnishing Janet Harris's otherwise meager income for the \$4,772.34 debt.
5. Janet Harris exists at about 150% of the Federal poverty level, and needs every cent in her paycheck.
6. Janet Harris now requests this court for an Order to avoid these liens under §522(f).

Analysis:

7. "Section 522(f) serves as but one example of Congress having exercised its power to allow the cancellation of a creditor's *in rem* interest in property by affording debtors the power to avoid judicial liens that impair otherwise valid exemptions." In Re: Jerew, No. 06-BK-33252, N.D. of Ohio (2009), at ¶20.

8. Bankruptcy Code §522(f)(1)(A) states (in part):

[T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is – a judicial lien

9. The statutory text enumerates three elements to be satisfied for a debtor to avoid a lien under this section:

- (1) it must be a judicial lien;
- (2) the lien must be fixed against an interest of the debtor in property; and
- (3) the lien must impair an exemption to which the debtor would otherwise be entitled.

McCart v. Jordana, 232 B.R. 469, 473 (10th Cir. B.A.P 1999).

10. All three elements are satisfied here:

- (1) These two liens are non-consensual, judicial liens against Janet Harris, as shown by the Judgment Docket Entries, for Stow Municipal Court, 2019CVF01153 and 2019CVF04156 respectively, attached as Exhibits A and B.
- (2) These liens are fixed against the interest of Janet Harris in her personal property, which impairs her exemptions under R.C. §2923.66.
- (3) This judgment impairs the exemptions on her personal property.

11. For the above reasons, Debtor Janet Harris humbly requests this court for an Order to avoid the Bank of America and Portfolio Recovery liens as properly avoidable under §522(f)(1).

Respectfully Submitted,



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Attorney for Janet Harris

2019CVF01153 BANK OF AMERICA NA -vs- HARRIS, JANET ADM

- Case Type:
- CIVIL
- Case Status:
- CLOSED
- File Date:
- 04/09/2019
- Action:
- (EFILING) CONTRACT - UP TO TWO DEFENDANTS
- Status Date:
- 04/09/2019
- Case Judge:
- ADMINISTRATIVE JUDGE
- Next Event:
-

[All Information](#)
[Party](#)
[Docket](#)
[Financial](#)
[Checks](#)
[Receipt](#)
[Disposition](#)
[Additional Fields](#)

Party Information**BANK OF AMERICA NA**

- Plaintiff

- DOB
-
- Disposition
-
- Disp Date
-
- Address
- C/O LEVY & ASSOCIATES LLC
- 4645 EXECUTIVE DR
- COLUMBUS, OH 43220
- Phone

Alias

Party Attorney

- Attorney
- LEVY, YALE R
- Address
- LEVY & ASSOCIATES LLC
- 4645 EXECUTIVE DR
- COLUMBUS, OH 43220
- Phone
- (866)767-3538

HARRIS, JANET

- Defendant

- DOB
-
- Disposition
-
- Disp Date
-
- Address
- 265 N THOMAS RD APT 104R
- TALLMADGE, OH 44278
- Phone

Alias

Party Attorney**Docket Information**DateDocket Text

Amount Image
Owed Avail.

<u>Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
04/09/2019	CIVIL COMPLAINT FILED (UP TO TWO DEFENDANTS) Receipt: 369679 Date: 04/09/2019	\$182.00	Image
04/09/2019	CONFIDENTIAL DISCLOSURE OF PERSONAL IDENTIFIERS FILED BY PLAINTIFF Attorney: LEVY, YALE R (0065006)		Image
04/09/2019	CIVIL COMPLAINT AND SUMMONS ISSUED BY FEDEX #1420 - DELIVERED 4/12/19; ANS DATE 5/10/19 TO JANET HARRIS CIVIL SUMMONS Sent on: 04/09/2019 15:02:52.56		Image
05/23/2019	MOTION FOR DEFAULT JUDGMENT FILED BY Receipt: 373348 Date: 05/23/2019 Attorney: KERNS, JORDANNA B (0092047)	\$25.00	Image
05/30/2019	ORDER - MOTION FOR DEFAULT JUDGMENT SIGNED BY MAGISTRATE J W CLARK		Image
05/30/2019	Judgment Docket Entry (001) Judgment For Plaintiff by Default Damages : \$4,772.34 Interest : \$0.00 Attorney Fees : \$0.00 Costs : \$ Other Fees : \$0.00 Total : \$		
05/30/2019	ORDER NOTIFICATION SENT TO ALL PARTIES CIVIL ORDER NOTIFICATION (Notice) Sent on: 05/30/2019 16:01:28.13		Image
01/14/2020	CIVIL GARNISHMENT ON JUDGMENT GREATER THAN \$3,000 FILED BY Attorney: SALYER, MATTHEW S (0086222) Receipt: 390698 Date: 01/14/2020	\$175.00	
01/22/2020	CIVIL GARNISHMENT PROCESSED GARNISHMENT ISSUED TO: AKRON PUBLIC SCHOOLS BY FEDEX #1769 - DELIVERED 1/24/2020 Attorney: LEVY, YALE R (0065006)		Image
01/29/2020	ANSWER FILED BY AKRON PUBLIC SCHOOLS- YES EMPLOYED		Image
02/07/2020	GARNISHMENT RECEIPT Receipt: 392593 Date: 02/07/2020	\$295.93	Image
02/18/2020	GARNISHMENT CHECK (JUDGMENTS) ISSUED TO LEVY & ASSOCIATES, LLC FOR \$290.01 Check Issued: 02/18/20 Check #15732 \$290.01 Payable to: LEVY & ASSOCIATES, LLC.	\$290.01	
02/24/2020	GARNISHMENT RECEIPT Receipt: 393682 Date: 02/24/2020	\$406.72	Image
02/25/2020	GARNISHMENT CHECK (JUDGMENTS) ISSUED TO LEVY & ASSOCIATES, LLC FOR \$398.59 Check Issued: 02/25/20 Check #15809 \$398.59 Payable to: LEVY & ASSOCIATES, LLC.	\$398.59	
03/04/2020	ANSWER FILED BY AKRON PUBLIC SCHOOLS		Image
03/18/2020	BANKRUPTCY NOTICE FILED Attorney: WINTERS, SEAN M (0084612)		Image

Financial Summary

<u>Cost Type</u>	<u>Amount Owed</u>	<u>Amount Paid</u>	<u>Amount Adjusted</u>	<u>Amount Outstanding</u>
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<u>Cost Type</u>	<u>Amount Owed</u>	<u>Amount Paid</u>	<u>Amount Adjusted</u>	<u>Amount Outstanding</u>
Civil Cost	\$382.00	\$382.00	\$0.00	\$0.00
Garnishment Money	\$702.65	\$702.65	\$0.00	\$0.00
Total	Total	Total	Total	Total
	\$1,084.65	\$1,084.65	\$0.00	\$0.00

- **Money on Deposit with the Court**

<u>Account</u>	<u>Applied Amount</u>
Judgments (GARNISHMENT)	\$0.00
Total	Total
	\$0.00

- **Money Distributed by Court**

<u>Payment Type</u>	<u>Amount</u>
Payment	\$688.60
Total	Total
	\$688.60

Check Information

<u>Created</u>	<u>Payee Name</u>	<u>Description</u>	<u>Account</u>	<u>Check</u>	<u>Amount</u>
02/18/2020	LEVY & ASSOCIATES, LLC	Case: 2019CVF01153 GARNISHMENT CHECK (JUDGMENTS)	JUDGE	15732	\$290.01
02/25/2020	LEVY & ASSOCIATES, LLC	Case: 2019CVF01153 GARNISHMENT CHECK (JUDGMENTS)	JUDGE	15809	\$398.59

Receipts

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Received From</u>	<u>Payment Amount</u>
369679	04/09/2019	Yale Levy	\$182.00
373348	05/23/2019	Yale Levy	\$25.00
390698	01/14/2020	LEVY & ASSOCIATES LLC	\$175.00
392593	02/07/2020	AKRON BOARD OF EDUCATION	\$295.93
393682	02/24/2020	AKRON BOARD OF EDUCATION	\$406.72
Total	Total	Total	Total
			\$1,084.65

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
(AJ) HEARING BY MAGISTRATE	05/30/2019	ADMINISTRATIVE JUDGE

2019CVF04156 PORTFOLIO RECOVERY ASSOCIATES LLC -vs- HARRIS, JANET ADM

- Case Type:
- CIVIL
- Case Status:
- CLOSED
- File Date:
- 12/18/2019
- Action:
- (EFILING) CONTRACT - UP TO TWO DEFENDANTS
- Status Date:
- 12/18/2019
- Case Judge:
- ADMINISTRATIVE JUDGE
- Next Event:
-

All Information Party Docket Financial Receipt Disposition Additional Fields

Party Information

PORTFOLIO RECOVERY ASSOCIATES LLC

- Plaintiff

- DOB
-
- Disposition
-
- Disp Date
-
- Address
- 120 CORPORATE BLVD
- NORFOLK, VA 23502
- Phone

Alias

Party Attorney

- Attorney
- TRAUT, TED M
- Address
- WELTMAN, WEINBERG & REIS
- 965 KEYNOTE CIR
- BROOKLYN HEIGHTS, OH 44131
- Phone
- (216)739-5002

HARRIS, JANET

- Defendant

- DOB
-
- Disposition
-
- Disp Date
-
- Address
- 265 N THOMAS RD, APT 104R
- TALLMADGE, OH 44278
- Phone

Alias

Party Attorney

Docket Information

Date Docket Text Amount Image

		<u>Owed</u>	<u>Avail.</u>
12/18/2019	CIVIL COMPLAINT FILED (UP TO TWO DEFENDANTS) Receipt: 388682 Date: 12/18/2019 Attorney: TRAUT, TED M (0072514)	\$198.00	Image
12/18/2019	CIVIL COMPLAINT AND SUMMONS ISSUED BY FEDEX #3372 - DELIVERED 12/19/2019; ANS DATE 1/16/2020 TO JANET HARRIS CIVIL SUMMONS Sent on: 12/18/2019 09:50:24.78		Image
02/13/2020	MOTION FOR DEFAULT JUDGMENT FILED BY Receipt: 392984 Date: 02/13/2020 Attorney: TRAUT, TED M (0072514)	\$25.00	Image
02/20/2020	ORDER - MOTION FOR DEFAULT JUDGMENT GRANTED IN FAVOR OF THE PLAINTIFF BY MAGISTRATE J W CLARK		Image
02/20/2020	Judgment Docket Entry (001) Judgment For Plaintiff by Default Damages : \$4,041.16 Interest : NONE Attorney Fees : \$0.00 Costs : \$ Other Fees : \$0.00 Total : \$		
02/20/2020	ORDER NOTIFICATION SENT CIVIL ORDER NOTIFICATION (Notice) Sent on: 02/20/2020 09:51:08.44		Image

Financial Summary

<u>Cost Type</u>	<u>Amount Owed</u>	<u>Amount Paid</u>	<u>Amount Adjusted</u>	<u>Amount Outstanding</u>
Civil Cost	\$223.00	\$223.00	\$0.00	\$0.00
Total	Total	Total	Total	Total
	\$223.00	\$223.00	\$0.00	\$0.00

Receipts

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Received From</u>	<u>Payment Amount</u>
388682	12/18/2019	Ted Traut	\$198.00
392984	02/13/2020	Ted Traut	\$25.00
Total	Total	Total	Total
			\$223.00

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
(AJ) HEARING BY MAGISTRATE	02/20/2020	ADMINISTRATIVE JUDGE